This they failed to do, with the result that the certificate became final and conclusive. In this connection the learned trial judge had this to say:

"In the present case the defendants had failed to take any step in that direction. They cannot now be allowed to say that they are still interested parties. They cannot take advantage of their own wrong. ... It is now too late for them to say that the said certificate is defective or unenforceable."

He went on to say that when a plaintiff comes to court armed with a certificate issued by the Rent Assessment Board under section 12(1)(m) of the Ordinance, neither the court nor the defendant can go behind the certificate.

It was argued on behalf of the two defendants in the court below and before us that no order for possession could rightly be made against them because of section 19(1) of the Ordinance which reads as follows: —

"19. (1) Where any order or judgment for the recovery of possession has been obtained against the tenant of any premises, such order or judgment shall not be enforceable against any sub-tenant of such tenant unless —

(a) the Court is satisfied that such tenant was prohibited by the terms of his tenancy from sub-letting or that such sub-tenant has used the premises for illegal or immoral purposes; and

(b) such sub-tenant has been made a party to the proceedings or has had an opportunity of being heard.

Every order or judgment for possession made against any tenant shall declare whether it shall be enforceable against any sub-tenant or not."

It is to be observed that that section speaks of an order or judgment for the recovery of possession of premises, which can only be made by the court. The Rent Assessment Board as such has no power to make any such order or judgment. It therefore follows that the requirement as regards a sub-tenant or sub-tenants being made a party or parties to the proceedings can only refer to the proceedings in court and not to any proceedings before the Rent Assessment Board. So long as the sub-tenants are made parties to the action the court has the power to make an order for the recovery of possession as against them, even though they were not made parties to the proceedings before the Rent Assessment Board for the issue of a certificate under section 8(1)(e), which undoubtedly is the very basis of an action for the recovery of possession under section 12(1)(m). In other words, as counsel for the appellant submitted both in the court below and here, section 19(1) does not apply to any proceedings before the Rent Assessment Board.

The learned trial judge presumably found some support from the decision of the Privy Council in *Guan Seng Kee Ltd.* v. *Buan Lee Seng Ltd.*[1] for his conclusion that the order for recovery of possession could not be enforced against the second and third defendants who had become the statutory tenants of the plaintiff. But the decision in that case rested on a different set of circumstances. There, recovery of possession was sought from the sub-tenants, who had remained in possession after the tenants had given up their contractual tenancy and gone out of possession, under exception 14(1)(i) of the Singapore Control of Rent Ordinance, 1947, which is in *pari materia* with section 12(1)(i) of our Ordinance. It was held that the sub-tenants being "tenants" within the meaning of section 16(a) of the Ordinance (section 20(a) of our Ordinance) read in the light of the definition in section 2, and that as the case could not be brought within any of the exceptions covered by section 14 of the Ordinance (section 12 of our Ordinance), no order for recovery of possession could be made against them. In the present case, however, the plaintiff quite clearly brought herself within exception 12(1)(m) of the Ordinance. The case of *Saint Andrew's Mission Hospital* v. *Wah Hin & Co., Ltd. & Ors.*,[2] which was also referred to by the learned trial judge, was in no way relevant to this case because the defendants here had not taken the point that they had not been served with a notice to quit.

For the reasons I have stated, we allowed the appeal with costs, set aside the order of the court below and substituted in its place an order that the defendants do give vacant possession of the premises.

Ong C.J. (Malaya) and **Ali F.J.** concurred.

Appeal allowed.

Solicitors: *R. R. Chelliah Bros.; Mah & Kok; K. L. Devaser & Co.*

UNITED INDIA FIRE & GENERAL INSURANCE CO. LTD. v. JAFFNESE CO-OPERATIVE SOCIETY LTD.

[F. C. (Ong C.J. (Malaya), Gill and Ali F.JJ.) November 3, 1970]

[Kuala Lumpur — Federal Court Civil Appeal No. 43 of 1970]

Landlord and Tenant — Controlled premises — Contractual tenancy put an end to by notice to quit — Premises ceasing to be controlled — Position of tenant — Whether such a tenant can sub-let the premises — Whether sub-tenants to whom premises sub-let protected — Control of Rent Act, 1966.

The plaintiffs (respondents in this appeal), the owners of certain premises, had given notice to quit to their tenants, the Indian Overseas Bank. After the expiry of the notice to quit, the bank continued to occupy the premises. Subsequently they purported to sublet a portion of the premises to the second defendants/appellants. In an action by the respondents against the bank and the sub-tenants the High Court gave judgment in favour of the respondents on the ground that the bank was a statutory tenant and as such had no power to sublet the premises, so that when the tenant gave up possession of the premises, the subtenant was not protected. The second defendants appealed.

Held, dismissing the appeal: the effect of the Control of Rent Act, 1966 is to abolish "statutory tenancies". Under the Act a contractual tenant who is no longer such after the determination of his contractual tenancy holds over only by virtue of the protection approved by section 16(1) of the Act and nowhere in the Act is there any provision enabling the tenant to transmit his own privilege of irremovability to a third party, whether by assignment or subletting.

Cases referred to:-

(1) *Roe* v. *Russell* [1928] 2 K.B. 117, 130.

(2) *Oak Property Company Ltd.* v. *Chapman* [1947] 1 K.B. 886.

(3) *Solomon* v. *Orwell* [1954] 1 W.L.R. 629, 633; [1954] 1 All E.R. 874, 876.

(4) *Guan Seng Kee Ltd.* v. *Buan Lee Seng Ltd.* [1954] M.L.J. 34.

(5) *Tan Khio Soei* v. *Ban Hin Lee Bank Ltd.* [1964] M.L.J. 71.

(6) *The Queen* v. *Bishop of Oxford* (1879) L.R. 4 Q.B.D. 245, 261.

(7) *Tan Eng Seng* v. *Teo Soon Kiat & Ors.* [1956] M.L.J. 146.

(8) *Keeves* v. *Dean* [1924] 1 K.B. 685.

FEDERAL COURT.

P. Mooney for the appellants.

R. R. Chelliah for the respondents.

Cur. Adv. Vult.

Ong C.J. (Malaya): The question raised in this appeal is whether or not, after the Control of Rent Act 1966 came into force, a tenant of controlled premises who, in consequence of having been given a notice to quit, became a statutory tenant under the Control of Rent Ordinance 1956, can create a subtenancy which defies any claim to possession by the landlord, after the statutory tenancy itself has come to an end.

In 1949 the Jaffnese Co-operative Society Limited purchased the premises No. 10 Jalan Mountbatten, of which the Indian Overseas Bank Limited was the tenant The bank had then two sub-tenants, the Jaffnese Co-operative Society and Chari & Co., a firm of accountants, who shared the second floor. The society thus became owner as well as sub-tenant — which continued for nearly ten years. After the purchase the society on February 28, 1949 gave the bank a year's notice, under section 13(1)(f) of the Control of Rent Ordinance 1948, then in force, requiring the bank to give up vacant possession of the premises by March 31, 1950 on the ground that the society desired the same for its own use and occupation. Since the bank, as a protected tenant, was irremovable, the society took no further action thereafter, but was content to raise the rent from time to time to the permissible maximum.

In 1958 a new agreement was negotiated between the society and the bank, resulting in the surrender of the second floor to the society and the bank's retention of the ground and first floors for its own use. The society agreed to certain repairs and structural modifications being made at the bank's expense to suit its own special purposes. Under those circumstances the possibility was never envisaged of the bank ever subletting any portion of the premises to a third party. On this ground and this ground only I am certain that it never crossed the mind of the society's officers to impose any express condition prohibiting subletting Such a condition may with perfect reason be implied and for my own part I would so hold if such a finding be necessary to a proper decision in this case. The bank is an institution of the highest repute — in fact, one of the leading Indian Banks — not an ordinary fly-by-night customer whose future behaviour might have been contemplated with some degree of suspicion. Indeed, among dozens of banks in Kuala Lumpur the society had chosen the Indian Overseas Bank as repository of its own funds and so long as the bank required the premises for its own use the society honoured the pact to leave the bank in undisturbed possession.

In January 1966, 17 years after the society became its landlord, the bank negotiated the purchase of the Guthrie Agency's premises a few doors away for its own use. The society came to know about it and promptly on March 30, 1966 gave the bank a month's notice terminating its tenancy on April 30, 1966. The Control of Rent Ordinance of 1956 was then in force, so that it was plainly futile for the society to seek any order of court to recover possession until the bank's own premises were known to be ready for occupation. The notice, however, had this effect — that the tenancy, whether arguably contractual or not hitherto, clearly became a "statutory" one from May 1, 1966, by virtue of the provisions of section 20(a) of the Ordinance The bank until then had no sub-tenants: the society was fully aware of this fact, since its officers were occupying the top-most (second) floor of the same premises and on their way to work daily had to pass the two floors occupied by the bank.

On March 23, 1967 the bank published this notice: "We're moving 23rd March to our own new building at 4 Jalan Mountbatten, Kuala Lumpur .... Our new building has more banking space. More banking facilities (New Safe Deposits for your jewellery and valuables)." Neither before nor after such removal did the bank inform the society whether the premises would be handed back. The society accordingly took steps to notify the bank on March 30, 1967 that vacant possession should be delivered up before April 30, 1967. The new Control of Rent Act of 1966 had since come into force on January 1, 1967, repealing the 1956 Ordinance. Section 19(1) provides that a tenant subletting any part of controlled premises shall within 14 days after each subletting supply the landlord with a statement in writing giving particulars thereof, under pain of imprisonment or fine upon conviction for failing to do so. The bank's solicitors had been immediately consulted on receipt of the society's notice on March 30 and on the 14th day they replied forwarding the statement giving particulars of a new sub-tenancy given to the United India Fire and General Insurance Company Limited over the ground floor and intimating that the Bank did "not feel in any way obliged to comply" with the society's notice. On the following day, April 14, 1967, the society's solicitors wrote asking for information regarding the date of commencement of the sub-letting. Then only did the bank reply on April 18 that the insurance company became sub-tenants of the ground floor with effect from April 1, 1967. In this connection it may be observed that hitherto, the insurance company had been occupying other premises on Jalan Tuanku Abdul Rahman and that on April 1, 1967 — immediately after the bank had been notified by the society's letter dated March 30 of its intention to repossess the premises — did the managers of the bank and the insurance company put their heads together and agree on the date the sub-tenancy should be deemed to commence. I doubt that the insurance company could possibly have removed their office into the new premises on the very day the subletting was agreed upon. It was on April 1 that the company gave

notice to its own landlord of intention to vacate the former place of business by April 30, 1967. There being no evidence to the contrary, I must assume that the company did not go into occupation of its new place of business till April 30, or a few days earlier.

Having commenced business in its new premises on March 23, as advertised, the bank nevertheless decided to preserve its own tenancy over its former place of business — one reason for so doing being obviously to validate the sub-tenancy. To that end it stored some old furniture and old records on part of the vacant first floor and retained the keys to that floor. The ground floor keys had been turned over to its sub-tenant. The keys to the first floor were returned to the society on October 30, 1968. The bank's tenancy was surrendered with effect from October 31, 1968: see letters of September 25, October 26 and 31, 1968. But, ere this, the society had commenced action for possession against both the Bank and the insurance company on May 9, 1967.

As the bank had surrendered its tenancy of the premises by the time the action came on for trial the only question remaining to be determined was whether or not the insurance company was, as it claimed, entitled in respect of its occupation of the ground floor to protection under the Control of Rent Act 1966. The learned trial judge held it was not.

After considering *Roe* v. *Russell*[1] and *Oak Property Company Ltd.* v. *Chapman*[2] he came to the conclusion as follows: —

"In the present case, it is not disputed that there was no prohibition in the original tenancy against sub-letting and that the first defendants, as statutory tenant, were entitled to sub-let. The question that arises for consideration is whether the first defendants having abandoned occupation of the said premises, the second defendants thereafter retained the rights of occupation of the ground floor. This is a question of law. In the instant case, after careful examination of the various authorities, I am forced to the conclusion that, after the first defendants renounced their interest in the tenancy and their rights of occupation, the rights of the second defendants were thereby extinguished."

The insurance company appeals against the ejectment order on three main grounds. First, it is contended that, having found the premises to be controlled premises under the Act and that the bank was at all material times the statutory tenants, the learned judge should have held that the insurance company was lawfully in occupation of the ground floor as sub-tenant of the bank at the date of filing of the action and consequently entitled to remain in possession, notwithstanding any order that might be made against the bank. Secondly, as there was no prohibition against subletting by the bank, section 17(1)(a) of the Act had no application and, therefore, no order for possession could be made against the sub-tenant. Thirdly, it is argued that the learned judge was wrong in holding that the abandonment of the premises by the bank brought to an end the sub-tenant's right to occupy the ground floor and that, upon the bank's surrender of its statutory tenancy, the sub-tenant ceased to enjoy the protection of the Act.

From what has been stated above it is abundantly clear that the case has been argued here, as well as in the court below, on the assumption that the concept of a statutory tenancy survives unimpaired notwithstanding the repeal of the 1956 Ordinance by the Act of 1966. Hence we have been referred to English authorities as supporting the proposition that a statutory tenant, not prohibited by the terms of his original tenancy, can still sublet, so that the sub-tenant may "acquire at least a personal right to continue in possession, good against the landlord, *after the statutory tenancy has come to an end*": *per* Evershed M.R. in *Oak Property Co. Ltd.* v. *Chapman*.[2]

Also cited to us was *Solomon* v. *Orwell*[3] in which Denning L.J. said: —

"When a *statutory* tenant sublets a part of the premises, he does not thereby confer any estate or interest on the sub-tenant. A statutory tenant has no estate or interest himself, and he cannot carve something out of nothing. The sub-tenant, like the statutory tenant, has only a personal right or privilege. The question in this case is, What is the position of the subtenant when the statutory tenancy comes to an end? A statutory tenancy may, of course, come to an end without a notice to quit. It may come to an end, for instance, by death (if there are no entitled relatives) or by the delivery up of the premises to the landlord. When the statutory tenancy comes to an end, the subtenant's right automatically comes to an end, unless there is some statutory protection afforded to him. In the case of an *ordinary* subtenant he is protected under section 15(3) of the Act of 1920. He becomes the direct tenant of the head landlord, on the same terms as those on which he would have held from the previous tenant. But a subtenant who has been sharing with the tenant is not protected."

This case makes it clear that, in English law, an ordinary sub-tenant's protection is derived from section 15(3) of the 1920 Act, which makes him a direct tenant of the landlord upon the tenancy coming to an end. It is argued, therefore, on behalf of the appellants, that substituting section 15(3) of the English Act by section 17(3) of our Act of 1966, the sub-tenant of a statutory tenant is given similarly effective protection. Section 17(3) of our 1966 Act reads: —

"(3) Any sub-tenant against whom such judgment or order is not enforceable shall, if he remains in possession after notice of the judgment or order has been served on him, cease to be a sub-tenant of the tenant and shall hold the premises comprised in the sub-tenancy subject to any subsisting restrictive covenants contained in the terms and conditions of the tenancy between the landlord and the tenant and to all the rights and powers conferred on a landlord under any law relating to distress for arrears of rent, and shall be entitled to give up possession of the controlled premises only by giving such notice as would have been required under the original sub-tenancy or if no notice would have been required on giving not less than one month's notice provided that notwithstanding anything in the contract of tenancy a landlord who obtains such judgment or order shall not be required to give any notice to quit to such sub-tenant."

If we strictly follow English law it is clear on authority that, whether the tenancy is contractual or statutory, a sub-tenant can claim the same protection as the tenant, provided that the premises were "lawfully sublet" to him. Prior to our Control of Rent Act 1966 rent control legislation, both in Malaya and Singapore, had undoubtedly been inspired by similar Acts passed in Westminster, so that the principles enunciated by English courts were invariably followed by the courts here as well as in Singapore: see *Guan Seng Kee Ltd.* v. *Buan Lee Seng Ltd.*[4] and *Tan Khio Soei* v. *Ban Hin Lee Bank Ltd.*[5]

The 1966 Act, however, has made extensive amendments in the pre-existing law with the object of bringing about a large measure of decontrol to meet the changing needs of society. Thus, for all controlled premises, landlord and tenant may, subject to certain limitations, agree upon a fair rent, replacing the rigid formula previously used to determine the maximum recoverable rent (sections 5, 6 and 7). Rent Tribunals are now empowered to make orders for recovery of possession of controlled premises for purposes of development (section 18). Unconscionable profits from subletting formerly made by tenants at the expense of their landlords may now be channelled back by conversion of a subletting into a joint tenancy at the landlord's option (section 19). And, most striking of all, is the provision for decontrol to be found in section 23 which reads as follows: —

"(1) In either of the following events, namely —

(a) where the tenancy of any controlled premises, being a tenancy for a fixed period and other than a monthly tenancy, has been determined either by effluxion of time or by any other means whatsoever; or

(b) where the tenant of any controlled premises for any reason whatsoever surrenders his tenancy either on his own volition or is required by law so to do,

the landlord thereof may apply to the Tribunal requiring the latter to issue a certificate stating either or both of the facts referred to in this sub-section, and upon the issue of such certificate a copy thereof shall be served on the tenant.

(2) Upon the service on the tenant of a copy of such certificate, the premises concerned shall forthwith cease to be controlled premises and *any person* holding on after such cessation shall cease to enjoy the benefits and protection which he would otherwise have enjoyed under this Act but for such cessation."

As I understand it the section provides that, whenever the tenancy of any controlled premises comes to an end — whether upon expiry or other determination of a lease for a term of years, or, in case of monthly tenancies, upon surrender thereof, voluntary or otherwise — the landlord is entitled, upon application to the rent tribunal at any time, to a certificate of decontrol of the controlled premises. The tribunal, of course, is left no discretion in the matter, since it is *required* to issue such certificate upon proof of the event described in either paragraphs (a) or (b).

What is not at all clear, however, is the meaning and effect of sub-section (2). Decontrol of the premises concerned is declared to take effect upon service of the certificate on the tenant, but why service? It seems wholly pointless under paragraph (b), since the tenant in that event will have vacated the premises voluntarily or be required by an order of court to do so. In either case he had no more right or interest whatever in the premises. It is perhaps only under paragraph (a) — where a lease has expired or suffered forfeiture but the lessee is recalcitrant by refusing to quit — that the service can be of any useful purpose.

More perplexing still is the scope or ambit of this sub-section. Applying the first and most elementary rule of construction, that words shall be given their ordinary grammatical meaning, it would seem that, where a tenant is tenant of the whole premises, the entire premises (being "the premises concerned") should naturally become decontrolled. If, as here, the bank was tenant of the ground and first floors, service of the certificate should result in decontrol of both floors. This in my view must be so, even if the bank had not the use and occupation of the ground floor, since its tenancy was a tenancy, one and indivisible, of both floors "of the premises concerned".

Assuming that this is the true and logical construction, it means that sub-section (2) now lays down a new rule of general application — that henceforth the tenant of controlled premises holds within the hollow of his hands the fate of every sub-tenant holding under him. Should he suffer or permit decontrol, all his sub-tenants automatically lose their protection under the Act. Such construction necessarily sets at nought the provisions of sub-section (3) of section 17 already quoted above.

How then can this conflict be reconciled? It is an accepted canon of construction that "a statute ought to be so construed that, if it can be prevented, no clause, sentence or word shall be superfluous, void, or insignificant": see *The Queen* v. *Bishop of Oxford*.[6] Applying this principle, I think the repugnancy between sub-section (2) of section 23 and sub-section (3) of section 17 can be resolved only if they are read together as complementary, in the sense that the provisions of section 17(3) constitute an exception to the general rule laid down by section 23(2). In other words, decontrol cannot affect any sub-tenant holding under a contractual tenant who was not prohibited by the terms of his tenancy from subletting: see paragraph (a) of section 17(1). Upon the tenant's disappearance from the scene, the sub-tenant becomes a direct tenant of the landlord, as under section 15(3) of the English Act of 1920. In that event the sub-tenant, upon becoming tenant in his own right, falls under the protection of section 16(1) of the Act, against whom the landlord's right to repossession is limited to the cases set out in paragraphs (a) to (m). Since the provisions of section 17(3) must turn out to be a meaningless nullity unless construed as an exception to the rule established under section 23(2), I would hold that section 17(3) does constitute an exception to that Rule.

Having reached this conclusion by reference only to the statute itself, I find my views fortified by the explanatory statement appended to the Bill when it was presented to Parliament. The object and purpose of section 17(3) and section 23 was therein stated as follows: —

"7. Protections which under the existing law are enjoyed by statutory tenants, i.e., persons who hold over after they have no more right to possession of a controlled premises are abolished except in one instance only. This is provided in Clause 17(3) which covers the position of a sub-tenant against whom an order of the Court for the recovery of possession made in favour of the landlord is not enforceable...

8. Since protections are no longer afforded to statutory tenants, provisions are therefore made in the Bill (Clause 23) providing for the cessation of controlled premises upon the happening of two events. Once either of these events occurs, an application may be made by the landlord for a certificate and upon the service of a copy of such certificate the premises named therein shall become free from the operation of the Bill."

To return to the instant case, my view is that the appellants cannot resist the respondents' claim to re-

possession — even without any certificate of decontrol under section 23. In the first place, there is no longer any such creature as the "statutory tenant" after January 1, 1967. It will be noted that all reference to "statutory tenants" contained in Part V, sections 20 and 21, of the 1956 Ordinance and in the definition of "tenant" have been deleted from the 1966 Act. There remains only one relic of him from the past namely that under subsection (3) of section 17 the sub-tenant who is irremovable by virtue of the provisions of section 17 continues to enjoy the same personal, non-transferable privilege of occupation as the statutory tenant formerly did by virtue of the provisions of section 19(2) of the 1956 Ordinance. Here, the appellants base their sub-tenancy of the ground floor on a grant by the "statutory tenant" of the bank, after the 1966 Act had abolished statutory tenancies. Under this Act the bank enjoyed simply the protection afforded to it under section 16(1). Nowhere in the 1966 Act is there any provision enabling it to transmit its own privilege of irremovability to a third party — whether by assignment or subletting. *Nemo dat quod non habet.*

In taking this view, I am not forgetting that the appellants rely on the provisions of section 17(1) of the Act, namely —

> "(1) Where an order or judgment for the recovery of possession has been obtained under the preceding section against the tenant of an controlled premises, such order or judgment shall not be enforceable against any sub-tenant of such tenant unless —
>
> (a) the court is satisfied that such tenant was prohibited by the terms of his tenancy from subletting or that such sub-tenant has used the premises for illegal or immoral purposes; and
>
> (b) such sub-tenant has been made a party to the proceedings or has had an opportunity of being heard."

It is contended that, since the bank was not prohibited by the terms of its tenancy from sub-letting, then paragraph (a) must apply. This argument in my view is fallacious. The appellants' case would be unassailable had they been given a subtenancy by a contractual tenant. Such a tenant has a common law right or interest out of which could be carved rights of the same nature. But then the bank had ceased to be a contractual tenant since May 1, 1966, and under the new Act a contractual tenant who is no longer such, after the determination of his contractual tenancy, holds over merely by virtue of the protection afforded by section 16(1): see the judgment of Denning L.J. in the judgment above quoted. The appellants found shelter under the bank. Once such protection is removed, the ground is cut from under their feet; they can have no claim to occupancy of the ground floor, except by virtue of the bank's privileged status.

I would accordingly dismiss the appeal with costs. For the reasons above stated I think the order of the court below requires consequential amendments. The trial judge appears to have overlooked the fact that he has, under the proviso to sub-section (6) of section 16 of the Act, a discretion to award costs where the conduct of a party has been improper and unreasonable. Here the bank had acted in concert with the insurance company in attempting wrongfully to insinuate a stranger into the premises as a protected tenant. This I consider an abuse of rent control legislation, the object of which is to protect sitting tenants against rapacious landlords rather than lend itself to the oppression of landlords by their tenants. As the defendants were clearly blamable for seeking to circumvent the plaintiffs' repossession of the premises, it is only just that they should be mulcted in costs of the action and I would so order.

Furthermore the order takes no account of the bank having surrendered its tenancy on October 31, 1968, incurring thereby no further liability for rent after that date. The bank should therefore be liable only for rent unpaid from August 1, 1967 to October 31, 1968 at $530 per month. The order should be amended accordingly.

Although the point was not argued before us, there is an appeal against the award of double rent from the date of judgment till delivery of possession. The order made was for payment of *mesne* profits by the defendants at the rate of $1,060 per month from the date of Order, April 10, 1970. As the bank had vacated the first floor and surrendered its tenancy on October 31, 1968, the insurance company became, in law, trespassers on the ground floor from November 1, 1968 Therefore the order should make the company liable for double value of the premises, that is to say, $750 per month from that date till delivery of possession to the landlord.

Ali F.J.: The Indian Overseas Bank, a statutory tenant of premises No. 10, Jalan Mountbatten, Kuala Lumpur, sublet part of it, the ground floor, to the appellant in consideration of rents received. The bank became a statutory tenant upon the termination of its contractual tenancy by notice to quit. Exactly when the bank became a statutory tenant is not of material importance to this appeal but it is of importance to note that when it became a statutory tenant, the protecting statute in force was the Control of Rent Ordinance 1956. During the currency of that Ordinance nothing happened which could give rise to any question under that Ordinance. On January 1, 1967 that Ordinance was repealed by the Control of Rent Act 1966 and it was during the currency of this new Act, *i.e.* on April 1, 1967 that the bank sublet the ground floor to the appellant. Soon after the subletting, that was in May, 1967, the landlord commenced action for possession against the bank as well as against the appellant. The landlord's case on the pleadings was that the bank, being no longer in occupation by March 23, 1967 no longer required the premises for its business purposes and it was, therefore, reasonable that the landlord should have the premises back. The claim was brought under section 16 of the new Act. As against the appellant the landlord clearly did not recognise the subletting as conferring on him any right which can defeat the claim for possession. The trial took place on March 11, 1970 and the trial court's finding of fact is that on March 23, 1967 the bank was still in lawful occupation of the first floor of the premises but was no longer so in January, 1968, having completely left the premises. Needless to say that an order of possession against the bank was rightly made and for obvious reasons the bank has not appealed against that order

Also holding that the appellant/sub-tenant had no better rights than the bank, a similar order was made against the appellant who has now appealed on the ground that his sub-tenancy is a protected subtenancy. In support the appellant has relied on section 17 of the new Act, which provides:

"(1) Where an order or judgment for the recovery of possession has been obtained under the preceding section against the tenant of any controlled premises, such order or judgment shall not be enforceable against any sub-tenant of such tenant unless —

(a) the court is satisfied that such tenant was prohibited by the terms of his tenancy from subletting or that such sub-tenant has used the premises for illegal or immoral purposes; and

(b) such sub-tenant has been made a party to the proceedings or has had an opportunity of being heard.

(2) Every order or judgment for possession made against any tenant shall declare whether it shall be enforceable against any sub-tenant or not.

(3) Any sub-tenant against whom such judgment or order is not enforceable shall, if he remains in possession after notice of the judgment or order has been served on him, cease to be a sub-tenant of the tenant and shall hold the premises comprised in the sub-tenancy subject to any subsisting restrictive covenants contained in the terms and conditions of the tenancy between the landlord and the tenant and to all the rights and powers conferred on a landlord under any law relating to distress for arrears of rent, and shall be entitled to give up possession of the controlled premises only by giving such notice as would have been required under the original sub-tenancy or if no notice would have been so required on giving not less than one month's notice provided that notwithstanding anything in the contract of tenancy a landlord who obtains such judgment or order shall not be required to give any notice to quit to such sub-tenant."

Shortly put, the appellant's contention is that he is a sub-tenant within the meaning of this section. There was, however, little argument on the point, particularly at the hearing of this appeal, for attention was confined mainly to the question whether a statutory tenant has the right to sublet. The assumption, probably, was that an affirmative answer to the question would lead to the conclusion that a sub-tenancy created by a statutory tenant is one which must also enjoy the protection of the relevant statute. That was the conclusion arrived at in *Roe* v. *Russell*,[1] the judgment of which was read at some length by counsel for the appellant at the hearing of this appeal. The decision in that case was based, as it must, on the construction of the relevant provisions of the United Kingdom Rent Restriction Act of 1923. This is clear from the judgment of Sargant L.J., one of the members of the Court of Appeal. On page 138 the Lord Justice said:

"Apart from such fine distinctions, the appellant can point to the clear recognition by s. 4, sub-s. (1) (h), of the Act of 1923, of the right of statutory tenants to sublet part of their premises without incurring forfeiture;"

Scrutton L.J. and Eve J. both said to the same effect in their respective judgments. With respect, I cannot find any such recognition either in the repealed Control of Rent Ordinance 1956 or in the Control of Rent Act 1966. *Roe* v. *Russell, supra,* was cited in the Singapore case of *Tan Eng Seng* v. *Teo Soon Kiat & Ors.*[7] and there Whyatt C.J. said on page 148:

"The effect of sub-letting by a statutory tenant of premises within the United Kingdom Rent Restrictions Acts was considered in the English cases of *Roe* v. *Russell (supra)* and *Haskins* v. *Lewis* and it was clearly laid down in those cases that a sub-letting by a statutory tenant of part of his premises would confer upon the sub-tenants the protection of the Acts, notwithstanding that the statutory tenant had no legal estate out of which he could make a grant to his sub-tenants. Those decisions turn upon the construction of the provisions of the United Kingdom Acts and it does not follow, nor is it necessary to decide in this case, that they would apply to the Control of Rent Ordinance 1953, which, although in some respects *in pari materia* with the United Kingdom Acts, nevertheless differs materially in the wording of many of its provisions."

I am, respectfully, of the same view. On the other hand, the view has been adopted in our courts that a statutory tenant has only a right of personal occupation He has no estate or interest in the premises. See *Tan Khio Soei & Anor.* v. *Ban Hin Lee Bank Ltd.*[5] following *Keeves* v. *Dean.*[8] In *Solomon* v. *Orwell*[3] Denning, L.J. said that not having any estate or interest in the premises, a statutory tenant cannot, therefore, carve out something out of nothing. On page 877, the Lord Justice went on to say:

"In the present case the sub-tenant was a sharing sub-tenant and her right came to an end as soon as the statutory tenant surrendered the premises to the landlord."

Oak Property Company Limited v. *Chapman & Anor.*[2] was to the same effect. In *Tan Eng Seng's* case, *supra,* Whyatt C.J. referred to the principle in *Oak Property* case, *supra,* as being based:

"... not upon any special wording of the Acts, but upon what I may call the doctrine of non-residence which has been gradually developed by the Courts in the United Kingdom. In my opinion the same doctrine applies to the Control of Rent Ordinance 1953 except that it is more accurate to refer to it as the doctrine of non-occupation rather than non-residence since the Ordinance covers occupation of business as well as residential properties. The conclusion, therefore, which I have reached is that, whatever may be the position when a statutory tenant sub-lets only part of the premises, where he sublets the whole, he loses his statutory tenancy by non-occupation and consequently he is unable to confer any rights upon his sub-tenant."

The position, in my judgment, is the same in Malaysia It follows, therefore, that if the appellant/sub-tenant in this case could have no rights to the premises under the repealed Control of Rent Ordinance 1956, had it been in force when the sub-letting occurred, it would be impossible to argue that he can have any rights under the new Act of 1966. If I may say so in general terms the new Act has left out all provisions of the repealed Ordinance which relate to statutory tenants.

I would dismiss this appeal.

Gill F.J.: I concur. There is nothing which I can usefully add to what has been said in the judgments just delivered, except to emphasise that the word "tenant" as defined in section 2 of the Control of Rent Act, 1966 does not include a statutory tenant, as it did under the definition contained in section 2 of the Control of Rent Ordinance, 1956.

Appeal dismissed

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